

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MAINE

3
4 UNITED STATES OF AMERICA) CRIMINAL ACTION
5)
6) Docket No. 99-72-P-H
7)
8 v.)
9)
10 CHARLES HALL,)
11)
12 Defendant.)
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TRANSCRIPT OF PROCEEDINGS

Pursuant to notice, the above-entitled matter came on for Sentencing Hearing before the HON. D. BROCK HORNBY, in the United States District Court, Portland, Maine, on the 17th day of January, 2001, at 3:22 p.m.

APPEARANCES:

For the Government: John Van Lonkhuyzen, Esquire
For the Defendant: Bruce Merrill, Esquire

Cindy Packard, RMR
Official Court Reporter

Proceedings recorded by mechanical stenography, transcript produced by computer.

1 (At 3:22 p.m., defendant present in open court with his
2 counsel, the following proceedings transpired.)

3 THE COURT: This is Criminal Number 99-72-P-H,
4 United States v. Charles M. Hall. The matter is on this
5 afternoon for sentencing.

6 Mr. Merrill, would you and Mr. Hall please stand.

7 Mr. Hall, the purpose of the hearing this afternoon is
8 for me to sentence you, but before I do that, I'm going to
9 hear from your lawyer. I'll hear from the prosecutor. I'll
10 hear from you, if you want to speak to me.

11 I'm going to start by asking some questions of you and
12 your lawyer because I need to be sure that you have read and
13 discussed with him the presentence report in this matter
14 before I can impose sentence.

15 First of all, Mr. Merrill, have you read and discussed
16 with Mr. Hall the presentence report?

17 MR. MERRILL: Yes, I have, Your Honor.

18 THE COURT: Did you have enough time to do that?

19 MR. MERRILL: Yes, I did. Thank you, Your Honor.

20 THE COURT: Mr. Hall, the presentence report tells
21 me in Paragraph 47 the medications that you are taking. I
22 think Mr. Merrill is going to turn to that paragraph so you
23 can see the list there. What I want to ask you, are you
24 still taking those medications?

25 MR. HALL: Some of them, Your Honor.

1 THE COURT: Some of them. Which ones are you no
2 longer taking?

3 MR. HALL: I'm no longer on the folic acid, the
4 Carafate, the Tagamet or the Imodium. I'm on Pentasa and
5 prednisone.

6 THE COURT: Are you taking those in the prescribed
7 amounts?

8 MR. HALL: Yes, I am.

9 THE COURT: Are there any new medications that
10 you're taking?

11 MR. HALL: An iron pill daily and a multivitamin.
12 That's it.

13 THE COURT: All right. Aside then from those
14 medications we've just talked about, have you used any other
15 drugs or alcohol in the last 24 hours?

16 MR. HALL: No, I have not.

17 THE COURT: Have you read and discussed the
18 presentence report with your lawyer?

19 MR. HALL: Yes, I have.

20 THE COURT: Did you have enough time to do that?

21 MR. HALL: Yes, Your Honor.

22 THE COURT: All right. Thank you. Then you can
23 be seated. I'll hear from the lawyers. I'll hear from the
24 prosecution first, Mr. Van Lonkhuyzen.

25 MR. VAN LONKHUYZEN: Your Honor, thank you. Your

1 Honor, the defendant -- the government moves that the
2 defendant be sentenced in accord with the plea. He pled
3 guilty to Count Six of mailing an extortionate letter in
4 violation of 18 USC, Section 876, Paragraph 2.

5 The letter to which he pled guilty was one of a series
6 addressed to U.S. Attorney McCloskey and others. In that
7 particular letter, he threatened to kill the U.S. Attorney
8 or a member of his family unless the defendant was paid
9 \$1 million and all criminal charges against him were
10 dropped.

11 The plea agreement is pursuant to Rule 11(e)(1)(C) and
12 has a 151-month appropriate disposition recommended, which
13 was accepted by this court.

14 The government believes that that 151-month sentence is
15 an appropriate disposition. First, the defendant is a
16 career offender within the meaning of the guidelines, and
17 the offense to which he pled guilty has a 20-year statutory
18 maximum.

19 Thus, 151 months is the low end of the guideline range,
20 assuming that the defendant gets three points for
21 acceptance.

22 Second, the sentence to be imposed here is greater than
23 the statutory maximum for violations of 844(e), making a
24 bomb threat by telephone, three of which were charged
25 against the defendant and which arguably are the most

1 serious of his conduct.

2 And third, with the defendant's prior sentences, both
3 state and federal, this sentence should keep him in prison
4 for approximately 20 years. He will have approximately 16
5 years of federal time to do after he completes his state
6 sentence.

7 Therefore, we believe this is an appropriate
8 disposition to be imposed.

9 I have one minor correction to the presentence report,
10 which I'd ask the court to adopt. Stacy Walker and Paula
11 O'Brien are listed in Paragraph 8 regarding victim impact as
12 two people who received threatening telephone calls.

13 The people who actually received the threatening
14 telephone calls were Adrienne Brown and David Brown of the
15 ATF, Kelley Spardella, a supervisor at the Portland Jetport
16 air traffic control tower, and Kim Stewart and Mike Megalski
17 for the call to the Secret Service.

18 Stacy Walker and Paula O'Brien actually were employees
19 of the U.S. Attorney's Office at that time. Stacy was a
20 student clerk. And they, among other things, opened some of
21 the threatening letters with which defendant was charged and
22 that's how they became victims.

23 THE COURT: So the correction you're asking is
24 to --

25 MR. VAN LONKHUYZEN: Is that Stacy Walker and

1 Paula O'Brien be listed as persons receiving -- opening
2 threatening letters rather than receiving threatening phone
3 calls.

4 THE COURT: I understand.

5 MR. VAN LONKHUYZEN: Further, the government urges
6 the court to find in its findings of fact that the defendant
7 did make the three telephone bomb threats on December 1st,
8 1998; June 19, 1999; and June 20, 1999, as set out in
9 Paragraphs 5, 6 and 7 of the presentence report.

10 The defendant admitted in his plea agreement that the
11 government's evidence would have proved these three calls if
12 they went -- if we had gone to trial and that they were, if
13 proven, relevant conduct.

14 Second, they are relevant conduct under the guidelines
15 and as the PSI concludes, they were substantiated as the
16 report says in the response to the defendant's objection.

17 They are also related in that the U.S. Attorney's
18 Office was investigating the first telephone bomb threat,
19 which led to the defendant writing his series of 13 letters,
20 including the one that he pled guilty here to today, the
21 first letters inquired about the status of that
22 investigation. They went on to solicit the murder of
23 Mr. McCloskey and then to threaten Mr. McCloskey and demand
24 that the investigation be dropped.

25 Second, the defendant engaged in the first of these

1 three threatening phone calls while he was being held for
2 sentencing by this court on his prior federal case. And
3 after -- the second two were made after he refused to give
4 handwriting exemplars and was held in contempt by this court
5 on the investigation leading to this case.

6 This is repeated conduct by the defendant while he has
7 been incarcerated in a maximum security unit. And the
8 government believes it important to find these so that the
9 Bureau of Prisons will have a basis found in fact in the
10 presentence report and the sentence to take whatever
11 measures BOP deems appropriate to prevent this kind of harm
12 happening in the future.

13 For example, the effects of this included closing
14 down -- these three calls included closing the airport twice
15 here in Portland. Five flights were diverted. More flights
16 were delayed.

17 One City Center was evacuated. There were numerous
18 searches. And in one instance, a bomb dog was called in
19 from the Brunswick Naval Air Station.

20 The defendant has repeatedly threatened law enforcement
21 and government officers, former President Bush at Walker's
22 Point, another Judge of this court and the U.S. Attorney.

23 We request that the court make a finding or adopt the
24 PSI that the defendant did make these three phone calls and
25 that in the judgment, the court indicate that BOP consider

1 these phone calls and as well as the conviction for the
2 threatening letter in determining what measures are
3 appropriate to monitor and/or restrict or limit defendant's
4 mail and telephone privileges while he is in BOP custody.

5 Thank you.

6 THE COURT: Thank you, Mr. Van Lonkhuyzen.

7 Mr. Merrill, for the defendant.

8 MR. MERRILL: Your Honor, if I could, on the
9 ministerial matter first. In Paragraph 8, we would request
10 that the reference to Special Agent Mike Megalski as being a
11 victim of any of the telephone calls, that Mike Megalski be
12 stricken.

13 He was a special agent. He was at home at the time. A
14 call was routed to him, but I do not believe he would
15 qualify in the legal sense as being a victim. And I would
16 ask that his name be stricken from Paragraph 8 of the
17 presentence report.

18 More importantly, and more of a matter of substance and
19 important to Mr. Hall is the fact that he entered into a
20 plea agreement to plead guilty to Count Six of the
21 indictment, which charged him with mailing a threatening
22 communication, extortionate communication.

23 He entered into that plea and made very clear that we
24 were not admitting to any of the other conduct in the
25 indictment. And, in fact, Paragraph 7 of the plea agreement

1 in the second sentence says the defendant and the United
2 States agree that the three telephone bomb threats described
3 in the statement of facts which is attached would be, if
4 proven, relevant offense conduct within the meaning of the
5 sentencing guidelines.

6 And it has always been our position that yes, if it was
7 proven, that would be relevant conduct. We were not
8 concerned about that because that is not the offense of
9 conviction which brings us before the court today.

10 The offense of conviction is mailing a threatening
11 communication, which Mr. Hall has admitted to. And I do not
12 believe that it is necessary or proper for this court to
13 resolve that issue as to whether or not Mr. Hall, in fact,
14 made the three telephone bomb threats that were charged in
15 that indictment. He objects to that.

16 The presentence report reflects each of Paragraphs 5
17 through 8 and 10, that the defendant is not admitting the
18 conduct described in those paragraphs.

19 We have no objection based upon the plea to Count Six
20 to writing a threatening communication if the government
21 wants to advise the Bureau of Prisons that they should
22 somehow monitor Mr. Hall's mail based upon the offense of
23 conviction, we cannot argue with that.

24 But we can and do argue against the necessity of this
25 court making a finding that Mr. Hall made any of the

1 telephone counts charged in the indictment. That is not
2 what he pled guilty to. And while we do not contest that if
3 proven, it would constitute relevant conduct, we didn't have
4 a trial on that. We didn't admit to those.

5 There have been no factual findings made regarding
6 whether or not Mr. Hall made those telephone calls. And we
7 would object and believe it is not necessary for this court
8 to resolve those issues in order to sentence Mr. Hall today.

9 The presentence report is obviously going to follow him
10 to the Bureau of Prisons. And that's why I asked that the
11 language be put in there indicating that he does not admit
12 to those charges, but I do not believe that this court's
13 imprimatur should be placed upon that when there have been
14 no factual findings to suggest that Mr. Hall, in fact, did
15 make those calls. And that is our major contention and
16 objection to the presentence report in this regard.

17 Other than that, this is an 11(e)(1)(C) plea as Mr. Van
18 Lonkhuyzen has indicated, has been accepted by the court.

19 We do not object to the other calculations as far as
20 guideline calculations that Mr. Hall is a career offender
21 under the guidelines, that his sentence is going to be 151
22 months. We understand that.

23 We understand that it's going to be consecutive to the
24 43-month sentence imposed by this court in December of 1998,
25 which is consecutive to the state court sentence which

1 Mr. Hall is presently serving and in all likelihood will not
2 expire until the year 2004.

3 So we believe that the sentence that is going to be
4 imposed more than adequately punishes Mr. Hall for the
5 incident offense to which he's pled guilty, which is mailing
6 a threatening communication.

7 THE COURT: Thank you, Mr. Merrill.

8 Mr. Hall, as a defendant before me for sentencing, you
9 have the right to speak to me. You can tell me anything you
10 want me to know, particularly anything that might lead me to
11 be more lenient with you, although I do point out as your
12 lawyer has that you've entered into a binding plea
13 agreement. This is your opportunity to tell me anything you
14 want me to know.

15 MR. HALL: I don't have anything further to add
16 than what my attorney already said, Your Honor.

17 THE COURT: All right. Thank you. You can be
18 seated. Anything further from the government?

19 MR. VAN LONKHUYZEN: No.

20 THE COURT: Thank you. Well, I have previously
21 read the presentence report. And now that I've heard from
22 the lawyers and from Mr. Hall, I'll make my findings of fact
23 and conclusions of law and impose sentence. I have
24 previously accepted the binding plea agreement in this
25 matter. And at this time, I will make the guideline

1 findings.

2 First of all, I find the facts as set forth in the
3 presentence report with these modifications. First, in
4 Paragraph 8, Stacy Walker and Paula O'Brien were not the
5 recipients of threatening telephone calls, but rather they
6 are people who opened threatening letters.

7 Also in Paragraph 8, Secret Service Agent Mike Megalski
8 should not be treated as a victim.

9 I do over the defendant's objection find the facts as
10 set out in Paragraphs 5, 6 and 7. He has not conceded to
11 those, I understand that. He has not admitted to them, but
12 I do find them as facts for purposes of this proceeding.

13 The base offense level under the guidelines is 18 under
14 2B3.2. Two levels are added for the death threat. Four
15 levels are added for the million dollar demand. Three
16 levels are added because the victim was a government
17 officer. Two levels are added for refusing to provide
18 exemplars to the Grand Jury.

19 All of that would result in an adjusted offense level
20 of 29. But because Mr. Hall is a career offender, under
21 Guideline 4B1.1, the offense level is 32. He does get a
22 three level reduction for accepting responsibility. Total
23 offense level is therefore 29.

24 His criminal history is Category VI. The guideline
25 prison range is 151 to 188 months. He is not eligible for

1 probation. Supervised release is two to three years. He's
2 not able to pay any fine. No departure has been requested.
3 Restitution is not an issue.

4 Aside from the objections you've raised previously, are
5 there any errors or omissions in the guideline findings,
6 first, for the government?

7 MR. VAN LONKHUYZEN: No, Your Honor.

8 THE COURT: Defense.

9 MR. MERRILL: No, Your Honor.

10 THE COURT: Mr. Hall, this is serious stuff that
11 you're involved in as you well know from the sentence that
12 you're confronting. I don't know why you do this. I'm not
13 sure that you know why you do it. The sentence here is
14 severe and appropriately severe because this has a
15 tremendous impact, what you've done in terms of society, in
16 terms of the fear that it generates in other people, in
17 terms of the effect it has on ordinary activities, whether
18 they're governmental activities or simply private activities
19 at an airport.

20 You obviously know already from your lawyer what the
21 sentence is going to be here because it's been agreed to.
22 And that's what I'm going to impose. I urge you to seek
23 whatever kind of counseling you can in the prison system so
24 that this comes to an end. You have a lot of years ahead of
25 you in prison, you know that. But there will come a time if

1 your health permits it when it will be over and you'll be
2 out. And so you certainly don't want to have these same
3 kinds of issues confronting you and dogging you when you
4 reach that stage.

5 At this time, the defendant will stand for sentencing.

6 The defendant is hereby committed to the custody of the
7 United States Bureau of Prisons to be imprisoned for a total
8 term of 151 months to be served consecutively to the
9 defendant's prior federal sentence under District of Maine
10 Docket Number 98-54-P-H.

11 It is my understanding as the sentencing Judge, and the
12 United States and the defendant have agreed, that no time
13 from June 10, 1999, to the date of today's date, the
14 sentencing in this case, will be counted toward either
15 federal sentence if such time is being counted by the State
16 of Maine toward the defendant's current state sentence.

17 I also bring to the attention of the Bureau of Prisons
18 the telephone bomb threats and the mail threats, M-A-I-L,
19 that are set forth in the presentence report, the serious
20 threats that the recommendation that the Bureau of Prisons
21 take appropriate measure to insure that these do not
22 continue, particularly since previous incidents have
23 occurred while Mr. Hall is in custody.

24 The defendant is remanded to the custody of the United
25 States Marshal.

1 Upon his release from prison, he shall be on supervised
2 release for a term of three years.

3 He shall report to the probation office in the district
4 to which he is released within 72 hours of his release.

5 He shall not commit another federal, state or local
6 crime.

7 He shall not illegally possess a controlled substance.

8 He shall refrain from any unlawful use of a controlled
9 substance.

10 He shall submit to one drug test within 15 days of his
11 release from prison, and at least two periodic drug tests
12 thereafter as directed by the probation officer.

13 He shall not possess a firearm.

14 He shall comply with the standard conditions that have
15 been adopted by this court and the following additional
16 conditions:

17 Specifically, he shall submit to testing for use of
18 drugs and intoxicants upon the demand of the supervising
19 officer.

20 Criminal monetary penalties are the special assessment
21 of \$100.

22 I find that he does not have the ability to pay any
23 fine. I therefore waive fines in this case, but for the
24 special assessment.

25 The payment of the special assessment is due and

1 payable in full immediately.

2 Now, Mr. Hall, you've entered into a plea agreement
3 that waives your right to appeal this sentence. Such a
4 waiver is generally enforceable.

5 If you believe your waiver is for some reason
6 unenforceable, you can present that argument to the Court of
7 Appeals. The only way you can do that is by filing a notice
8 of appeal with the clerk of this court within 10 days from
9 today. If you fail to do that, you will lose whatever other
10 rights of appeal you might have.

11 If you think that for some reason that your waiver is
12 unenforceable, and you want to file that notice and cannot
13 get your lawyer to do it, you can ask that the clerk of this
14 court file the notice, and the clerk will do it, but it has
15 to be within the 10 days.

16 And if you like, you can ask right now orally here in
17 open court for the clerk to do that, and the clerk will do
18 it.

19 And if for some reason your waiver is unenforceable,
20 and you cannot afford to prepay the costs of taking the
21 appeal, you can request permission to proceed without
22 prepaying costs. And if you qualify financially, you'll be
23 permitted to do that. Do you understand what I've told you?

24 MR. HALL: Yes, I do.

25 THE COURT: Anything further, Mr. Merrill, from

1 the defendant?

2 MR. MERRILL: Yes, Your Honor. I would ask that a
3 copy of this sentencing transcript be appended to the
4 presentence report so that Mr. Hall's objections to the
5 telephone bomb threats will be clear on the record.

6 And secondly, due to Mr. Hall's medical condition, as
7 the court's aware, he had an ileostomy surgery recently. He
8 has an ileostomy bag that he wears now. That appliance
9 requires him to daily change it and change some of the
10 bandages associated with that.

11 And I would ask that when the time comes for him to go
12 to a federal facility that he be designated to a federal
13 medical facility so he'll be able to deal with his medical
14 condition.

15 THE COURT: Let me deal with those. Does the
16 government take a position on either of those?

17 MR. VAN LONKHUYZEN: No objection to the first.
18 And as to the second, the government recommends that it be
19 left to the BOP's discretion.

20 THE COURT: On the first, I do have attached to
21 the presentence report as a matter of course the findings
22 that I make. And I will be clear with the court reporter
23 that those findings state that the findings are over the
24 objection as to those paragraphs, that the defendant does
25 not admit to those.

1 When she reviews the transcript, if that's not there, I
2 hereby instruct the court reporter to add the sentences that
3 I've just announced, that those findings are made over the
4 objection of the defendant.

5 MR. MERRILL: Thank you, Your Honor.

6 THE COURT: With respect to the second request, I
7 will add in the recommendation to the Bureau of Prisons that
8 they pay careful attention to the medical condition of
9 Mr. Hall that are set out in the presentence report and take
10 that into account in making an assignment to the appropriate
11 location.

12 MR. MERRILL: Thank you. One moment, Your Honor.

13 THE COURT: Anything further?

14 MR. MERRILL: Nothing else, Your Honor.

15 THE COURT: Anything further from the government?

16 MR. VAN LONKHUYZEN: No, Your Honor.

17 THE COURT: Thank you both, counsel, for your
18 performance. Court will stand adjourned.

19 (At 3:47 p.m., the foregoing proceedings were concluded.)

20 - - - - -

CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript of my stenographic notes of the proceedings held in the above-entitled matter.

Dated this 13th day of November, 2013.

/s/ Cindy Packard
Official Court Reporter

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